

## **EXHIBIT A**

IN THE UNITED STATES DISTRICT COURT  
IN AND FOR THE DISTRICT OF DELAWARE

TAIHO PHARMACEUTICAL CO. LTD., et al.,  
-----Plaintiffs,  
vs.  
EUGIA PHARMA SPECIALTIES LTD., et al.,  
-----Defendant.

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) Case No.  
) 19-CV-2309-CFC  
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TRANSCRIPT OF MOTION HEARING

MOTION HEARING had before the Honorable Colm F. Connolly, Chief Judge, in Courtroom 4B on the 8th of November, 2023.

APPEARANCES

DLA PIPER  
BY: ANGELA WHITESELL, ESQ.  
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-and-

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8 SMITH KATZENSTEIN & JENKINS LLP  
9 BY: DANIEL TAYLOR, ESQ.

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11 WINDELLS MARX LANE & MITTENDORF LLP  
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13 CONNIE HUTTNER, ESQ.

14 Counsel for MSN/Accord  
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1 MS. WHITESELL: Good morning, Your Honor.  
2 Angela Whitesell on behalf of DLA Piper introducing for you  
3 Mike Sitzman from DLA Piper, Megan Bowers, Ray Miller, Erin  
4 Larson, and Marcela Barros on behalf of the plaintiff,  
5 Taiho.

6 THE COURT: Good morning.

7 I guess Mr. Hitch is first.

8 MR. HITCH: Good morning, Your Honor. On behalf  
9 of Eugia, it's Cortlan Hitch from Morris James, and joining  
10 me today is Bill Hare from McNeely, Hare, and War.

11 THE COURT: Thank you.

12 Ms. Farnan.

13 MS. FARNAN: Good morning, Your Honor. Kelly  
14 Farnan from Richards, Layton, and Finger on behalf of Natco.  
15 I'm joined by Chris Sorenson from Merchant & Gould and Jason  
16 Wiener from Merchant & Gould.

17 THE COURT: Mr. Taylor.

18 MR. TAYLOR: Good morning, Your Honor. Daniel  
19 Taylor from Smith Katzenstein on behalf of MSN and Accord.  
20 With me from Windels Marx are Josh Miller and Connie  
21 Huttner.

22 THE COURT: Thank you. Nice to see you,  
23 Mr. Taylor.

24 All right. Well, I guess without thinking about  
25 it too deeply, when I finished the opinion, I thought this

1 was going to be appealed because it just -- I thought, why  
2 else was I trying the first case? So we need to kind of  
3 figure out what the right thing to do is here.

4 MR. SITZMAN: Your Honor, if that's what the  
5 Court is thinking, may I address the Court first?

6 THE COURT: Yeah, and just help me out. What --  
7 first of all, have you appeared before me before?

8 MR. SITZMAN: It's been a long time, Your Honor.

9 THE COURT: I meant in this case.

10 MR. SITZMAN: Not in this case. We substituted  
11 in after the end of the '284 trial, Your Honor. This is our  
12 first appearance. Thank you.

13 THE COURT: Well, okay. So why did we try the  
14 '284 first if we're now going to sit here and wait and wait  
15 and wait to try these other cases? What was the whole point  
16 of it?

17 MR. SITZMAN: Your Honor, I don't think we're  
18 waiting, waiting, waiting. If you want to go through the  
19 patents, I'm happy to. Remember, the polymorph case is  
20 ready to go. It was ready to go last year. It was going to  
21 go to trial the week after.

22 THE COURT: Are you going to agree then, if we  
23 try the polymorph case, are you going to agree at that point  
24 that it's a final judgment and all these cases are going to  
25 go up on appeal?

1 MR. SITZMAN: After the polymorph case is over,  
2 there will be final judgments in several cases that can be  
3 appealed.

4 THE COURT: Will there be a final judgment on  
5 the '284 patent?

6 MR. SITZMAN: There would be a final judgment on  
7 the '284 at that point as well. Exactly, Your Honor.

8 If I may, the Rule 54(b) -- I understand what  
9 the Court is thinking. And trust me, if I was in your  
10 shoes, I'd be thinking the exact same thing. But Rule 54(b)  
11 does not just allow a case to go up on trial. We've got  
12 lots of cases on appeal. You've got lots of cases with  
13 multiple patents. Once one patent is decided, Rule 54(b)  
14 doesn't kick in as an automatic appeal.

15 THE COURT: I get you're going to be able to  
16 make argument. My hesitancy to even grant the Rule 54(b)  
17 is it's then subject to the discretionary view by the  
18 Federal Circuit. So the last thing I want to do is spend  
19 more time writing that opinion when it's a 50/50 shot. It's  
20 a discretionary call.

21 What I'm trying to figure out is, look how many  
22 lawyers are in the room. Look how many patents and claims  
23 you're asserting. You're going to cripple the courts. We  
24 try to do these things efficiently. We try to conserve very  
25 precious, scarce judicial resources. What I'm trying to

1 figure out is why I tried that '284 case. I spent a lot of  
2 time writing that opinion, and in a way it's for sport. So  
3 what I should have done, maybe in retrospect, is not done  
4 the '284 and waited until I had all the cases together that  
5 I would try and then it would go up to the Federal Circuit.  
6 We're looking for efficiency.

7 You weren't here, but we spent a lot of time,  
8 hours, with all these lawyers trying to figure out the most  
9 efficient way to hear these cases. I don't need to hear  
10 anything about the standards for Rule 54 because I would be  
11 very reluctant to risk certifying something on Rule 54 and  
12 then you go up and you raise legal arguments to the Federal  
13 Circuit and who knows what they're going to decide. What  
14 I'm trying to get to the bottom of is, what's the most  
15 efficient way to go forward?

16 MR. SITZMAN: Here's what I would suggest, if I  
17 may. I think we should move forward on the polymorph case.  
18 It's all ready. It was ready to be tried. Many defense  
19 counsel at that hearing, which I've read that transcript  
20 several times, and I saw all the time the Court put in  
21 trying to figure this out. The defendants wanted to proceed  
22 forward quickly on that polymorph case. It's all done.  
23 There's no new discovery. There's no new anything. It just  
24 needs a trial date and it's ready to go.

25 At that time, there will be final judgments in

1 two of the four cases. The other two should go with it, and  
2 those two cases can go up on appeal. The remaining case --  
3 and I'll go back over this --

4 THE COURT: These are patents that don't expire  
5 until 2037, I think it is; right?

6 MR. SITZMAN: The remaining one is 2037. The  
7 polymorph is 2034. So the 2037 cases are not done with  
8 discovery. We're at the end of fact discovery. We've got  
9 expert discovery, et cetera. Those likely will be ready for  
10 trial at the latter part of 2024, but we don't have to worry  
11 about them if we move forward and get the polymorph trial  
12 done. Then what we've got is we've got final judgments that  
13 can go up on appeal without any reason to attack them either  
14 from Federal Circuit or from counsel, and we can move  
15 forward. But as this Court pointed out at the hearing last  
16 year, when you were trying to go through all of this, the  
17 problem with trying the '284 case first was it was the first  
18 one to expire in 2029 and they would not be able to launch  
19 until they got through those other two patent trials. They  
20 knew it.

21 THE COURT: They wouldn't be able to launch.  
22 Right. Because you're saying as long as even one of the  
23 patents is valid out there, they can't launch until 2037,  
24 2030-whatever.

25 MR. SITZMAN: Exactly, Your Honor. That was --



1 Your Honor is absolutely right. That was the conundrum that  
2 everybody was facing last year to try to figure this out.  
3 And we were going to go forward with the '284 and the  
4 polymorph case back to back. Unfortunately, we couldn't do  
5 them back to back. There was, I believe, a sickness issue  
6 related to the pandemic, and then there was a scheduling  
7 issue.

8 The polymorph case, though, is ready for trial.  
9 It should be scheduled at the Court's convenience. The  
10 parties are -- should be ready to go.

11 THE COURT: When will you be ready to go on the  
12 third tranche?

13 MR. SITZMAN: The SRI case? I think August. It  
14 will be done before that, but ready for trial in August.

15 THE COURT: Is there a trial date on it?

16 MR. SITZMAN: No, you haven't set one yet.

17 THE COURT: Did I construe any claims?

18 MR. SITZMAN: You didn't, but you decided that  
19 the one issue need not be decided before trial, so that's  
20 where we sit today.

21 THE COURT: On the '284, did I do any claim  
22 construction?

23 MR. SITZMAN: Not needed.

24 THE COURT: I didn't?

25 MR. SITZMAN: No, there was no construction

1 needed.

2 THE COURT: Did I make any legal rulings other  
3 than my trial opinion on the '284 case?

4 MR. SITZMAN: I might have to defer to  
5 Mr. Sorenson on that.

6 MR. SORENSON: No, Your Honor, you did not.  
7 There was a kerfuffle in the first case that related to  
8 polymorph patents (inaudible) and then there was a motion  
9 before Magistrate Judge Hall, I believe, but you've -- there  
10 was no Markman because we agreed there were no terms that  
11 required construction.

12 THE COURT: Which is very welcome. Thank you.  
13 Which is ironic. This is the case where you only agreed to  
14 six facts. Was this the one? I think so. You only agreed  
15 people were incorporated in the states they were  
16 incorporated in.

17 MR. SORENSON: If you remember the first  
18 pretrial hearing, you called us out on the carpet on that.  
19 We reached an amended pretrial order that had a lot more  
20 agreed facts than the first go-round. So you're thinking  
21 about the first time, and you appropriately asked us to redo  
22 that, and we did. There was more than six.

23 THE COURT: I think I had another one more  
24 recently where there were just six. People don't learn  
25 their lesson.

1 MR. SORENSON: Both sides think the facts are  
2 undisputed as long as you read them in the light of each  
3 side.

4 The only substantial decision on the '284 is the  
5 trial decision, and where we currently stand, there's no  
6 Markman determination to be made for the polymorph trial.  
7 Counsel is right. We're ready to roll. We had a fight over  
8 whether it would be more efficient on the polymorph trial to  
9 do a Markman on an issue that came up after the experts  
10 started doing reports. You already decided that a couple  
11 times and said you don't want Markman for the polymorph  
12 trial, and that's fine. We'll deal with that claim  
13 construction issue at that trial when you set that trial.  
14 Am I making sense?

15 THE COURT: No, it does. All right.

16 And you agree I didn't make any decisions in the  
17 '284?

18 MR. SITZMAN: I agree. I appreciate counsel's  
19 supplementation because I wasn't here. As far as I can  
20 remember from the record, there's nothing else on the '284  
21 other than the trial decision.

22 THE COURT: We don't have a trial date yet for  
23 the second or third tranche?

24 MR. SITZMAN: Correct.

25 Your Honor, let me offer one more piece of

1 perspective to help maybe. On the third, the SRI patent,  
2 the way things currently sit -- and we're finishing  
3 discovery and experts -- our view will be that that will be  
4 likely a validity-only trial. The infringement issues have  
5 either fallen away quickly or will be stipulated to, at  
6 least in our view. If that's the case, we're looking at a  
7 fairly quick trial for that third case, something on the  
8 order of maybe two and a half or three days at max. But I  
9 wanted you to have that in your head while you're trying to  
10 think through what's available.

11 THE COURT: All right. Thank you. So here's  
12 what I'm going to do: I'm going to reassign the case.

13 Thank you. You can have a seat, and I'll  
14 explain my thinking.

15 So we have a new judge coming on the court, and  
16 each of the current judges have to transfer a certain number  
17 of cases to that docket, and when we do that, we try to be  
18 equitable, but I've had hard time identifying cases that I  
19 can transfer that are midstream. What do I mean by that?  
20 We think it's fair to the new docket to not, for instance,  
21 transfer all new cases because then that poor judge, Judge  
22 Hall, would then have all the cases hit two years from now.  
23 So what we try to do is come up with cases that are -- some  
24 that are old, some that are midstream, and some that are  
25 brand new, and we go also by subject matter.

1 I'm down to 58 ANDA cases, but it's very  
2 difficult for me to identify an ANDA case that I can  
3 transfer to Judge Hall because I think it would be  
4 especially cumbersome and unfair to Judge Hall to transfer a  
5 case that I've made a lot of decisions on that she would  
6 inherit because I did that as a judge, and it's very, very  
7 frustrating, especially with regard to claim construction.  
8 And I've so far only identified one ANDA that I could  
9 transfer. And the other is because a lot of my ANDAs, one  
10 is multidistrict. I've already done tranches, and I had  
11 come into the case thinking there's no way I could ever  
12 transfer this one because I've already had a trial. I've  
13 been invested. It would not be fair to her.

14 But if I've not ruled on claim construction,  
15 and, in fact, the only thing I've done is my opinion, which  
16 is in writing, which is -- I think this is an ideal case,  
17 actually, to transfer to Judge Hall. She's also familiar  
18 with the case because she's handled some pretrial matters;  
19 right? And she has an open -- a much more open docket. And  
20 as I say, I had thought the only ANDA I could give her would  
21 be a brand new ANDA. There is one I'm going to give her,  
22 which is kind of by itself, and there's been no issues.

23 But that's what I'm going to do. And I don't  
24 want to get involved. What's before me is really just case  
25 management issues, and I haven't set a trial date,

1       apparently, for the second or third tranche.

2               Go ahead.

3               MR. SORENSON: If I may, Your Honor.

4               THE COURT: Yes.

5               MR. SORENSON: As I was getting ready for this  
6       hearing, I was sort of in the same kind of problem-solving  
7       mode that you're in, and your proposal to transfer the case  
8       to Judge Hall makes perfect sense to me. The polymorph case  
9       is set. It's ready to go. There's no more discovery,  
10      nothing more to do. We probably need to revise the pretrial  
11      order to consolidate it down and make it easier for that  
12      trial. It's a nice, concise, easy case. And you're  
13      correct, Judge Hall -- I doubt she remembers this. It was a  
14      while ago. There was a flurry of motions back and forth  
15      trying to deal with new expert opinion and the claim  
16      construction, but she's familiar with that.

17              The SRI patents, the ones that expire in 2037,  
18      they're kind of a different animal here, and I want to  
19      explain this to you because I think it's important that you  
20      understand that the '284 patent expires in 2029, and that's  
21      the one that we want to appeal right away so that we can get  
22      that Federal Circuit timeline rolling and at the same time  
23      deal with the polymorph trial, whenever it can happen either  
24      on your calendar or Judge Hall's calendar. If you recall,  
25      you had actually suggested that we consent to her

1 jurisdiction back when the first trial was cancelled, and we  
2 almost got there. I think that makes good sense.

3 I would suggest, as a potential solution as  
4 well, sever the SRI cases into its own case so that we can  
5 get that case taken care of on its own timeline but then  
6 once the polymorph trial is done and we have the polymorph  
7 decision, then we can take that to the Federal Circuit.

8 THE COURT: I'm pretty confident she would agree  
9 to that, but what I would rather do is let her make the  
10 call. It makes a lot of sense.

11 My problem is this: I think that it would take  
12 time to deal with the Rule 54 analysis. You want it to get  
13 up right now in the Federal Circuit, and I feel for you in a  
14 way. But the reality is you didn't make your burden at  
15 trial. And you know what? Because I've got to tell you, I  
16 don't know why we have to have a clear and convincing  
17 evidence standard, but we do.

18 MR. SORENSON: I understand.

19 THE COURT: And you just didn't make your  
20 burden.

21 MR. SORENSON: I read your opinion, and I don't,  
22 respectfully, agree with you, but I completely understand.

23 THE COURT: And if it had been a preponderance,  
24 you would have won, and somebody ought to really think  
25 that -- I researched it, for what it's worth. I didn't

1 realize the Supreme Court chimed in on the issue, and I  
2 guess it's Microsoft. But there's -- really people ought to  
3 be thinking why, as a policy matter, we have a clear and  
4 convincing evidence standard.

5 MR. SORENSON: As a battle-scarred generic  
6 lawyer, I tend to agree with you.

7 THE COURT: That's all I'm getting at is, I was  
8 sympathetic to the defendants, but, ultimately, I could not  
9 make a determination that you had established by clear and  
10 convincing evidence.

11 MR. SORENSON: I understand that, Your Honor.  
12 What I'm coming to this hearing with is trying to figure out  
13 how to solve the problem we have with the case schedule and  
14 case management. What we really need and what my client  
15 needs is more certainty. If we have a trial date set for  
16 the polymorph trial, they can plan around that date.

17 THE COURT: Here's what you could do, and I know  
18 Judge Hall would do this, is even if they're not going to  
19 consent, they'd have to wait until January 1st. She can set  
20 up a hearing and look at her calendar and say, "I've got you  
21 for trial here." And she's going to have a lot more  
22 flexibility than my calendar would.

23 MR. SORENSON: I don't understand the  
24 January 1st part of it.

25 THE COURT: So January 1st is Judge Andrews



1 effectively goes senior December 31st. As soon as her  
2 commission is signed, I will swear her in. I don't know  
3 that the President will sign the commission on January 1st.  
4 I can order you to set up a scheduling conference with her  
5 or they can consent. You can just do the consent right now.  
6 Either way, my point is that she could get on this right  
7 away and get you on the calendar, and she's going to have a  
8 lot more freedom on her calendar for next year than I do.  
9 I'm really booked for next year.

10 MR. SORENSON: I can't speak for the other  
11 parties, of course, but I think that the decision today  
12 about consenting to Magistrate Hall's jurisdiction is very  
13 different from the decision before the '284 trial as to  
14 whether consent to Magistrate Hall makes sense.

15 THE COURT: I don't know who didn't consent.  
16 Let's move on from that topic. I do recall because, again,  
17 of trial scheduling encouraging you all to do that.

18 But anyway, do you understand why I don't think  
19 it's a fruitful exercise to do the Rule 54? Having said  
20 that, I had thought -- it was a surprise to me when I  
21 understood there was some debate about this because I'm  
22 thinking, why am I doing this piecemeal? If that case --  
23 especially if that case --

24 Do you dispute that case is teed up ready to go  
25 to trial?

1 MR. SORENSON: I do not dispute that at all.

2 THE COURT: Frankly, it even makes more sense in  
3 terms of judicial efficiency at that point to put those two  
4 together, and I'll speak with her.

5 So you'll do the -- in other words, what I'll do  
6 is, I'm going to talk to her, get her to schedule as soon as  
7 she can the polymorph trial, then you guys can get up to the  
8 Federal Circuit on both cases. I think that would be  
9 beneficial to the defendants too; right? No?

10 MS. HUTTNER: Yes, it would be, Your Honor. I  
11 just want to point out, and I think counsel alluded to this  
12 before, that MSN and Accord are differently situated in that  
13 the '339 patent, which is one of the SRI patents, is in the  
14 same action as the '284 and the polymorph patents. So we  
15 won't be able to appeal as of right unless that is severed  
16 out from that case. When you talk --

17 THE COURT: They might agree to it. I bet  
18 they'll agree to sever it out.

19 MR. SITZMAN: Ms. Whitesell will address that.

20 MS. HUTTNER: We've been talking amongst  
21 ourselves trying to put a stipulation to that effect, but I  
22 just wanted to put that on your radar and perhaps you can  
23 convey that to Judge Hall.

24 THE COURT: Ms. Whitesell.

25 MS. WHITESELL: Exactly what counsel is saying,

1 is that we are working through a stipulation to sever the  
2 SRIs from polymorph cases and moving it over to  
3 consolidating it with second stage other cases of SRIs so  
4 they're all together. I don't believe there's any  
5 disagreement on it. It's just cleanup on stipulations and  
6 getting it on file.

7 THE COURT: That makes a lot of sense. Let me  
8 tell you where I am. I want to make sure you all agree to  
9 this, but some combination of Judge Hall and I will issue  
10 some combination of orders such that the polymorph tranche  
11 will be tried as early as Judge Hall can get it on the  
12 calendar. At that point, you all agree that the '284  
13 tranche and the polymorph tranche can go on an appeal to the  
14 Federal Circuit. The SRI cases are all severed and treated  
15 differently and are put on the back burner. That seems to  
16 me the most judicially efficient and fair way.

17 If I'm wrong, I want that generic on the market  
18 as soon as possible. That's why I tried to look at the  
19 '284, because what I remember was I thought, I had my doubts  
20 and still have my doubts as to the '284, but my point was if  
21 I thought, well, if I rule invalid, then it's going to go  
22 right away. The public will be able to get a generic, and  
23 that would be right. But the way the trial went and the way  
24 the evidence was presented, I did not think as an  
25 intellectually honest matter I could rule any other way than

1 I did.

2 Are you all good with that?

3 MR. SITZMAN: First of all, yes. And I wanted  
4 to all put on the record Taiho, Plaintiffs, consent to Judge  
5 Hall's assignment so if the Court is ready to make that  
6 phone call and speed things along, we would be more than  
7 happy to have that go forward in front of Judge Hall to move  
8 that polymorph case as fast as we can.

9 THE COURT: I want to make sure and on the  
10 record. This will be like -- you're agreeing that the  
11 polymorph tranche and the '284, once the polymorph is tried,  
12 that there's no dispute that both the '284 judgment that I  
13 entered or opinion I entered, I guess I should say, and  
14 whatever judgment Judge Hall enters with respect to the  
15 polymorph tranche become appealable to the Federal Circuit  
16 at that point.

17 MR. SITZMAN: Yes, Your Honor, and I understand  
18 exactly what -- yes, they will be final judgments in those  
19 cases. And as Ms. Whitesell said, we've already either  
20 cleaned up or will be cleaning up pulling the SRIs out of  
21 that first set of consolidated cases, so those cases will be  
22 done at the end of the polymorph case.

23 THE COURT: All right.

24 MR. SORENSON: I represent Natco, Your Honor,  
25 and I think that sounds pretty good. But for the record,

1 the agreements that are about to happen I've heard about  
2 today for the first time.

3 THE COURT: Okay.

4 MR. SORENSON: Doesn't in concept cause me any  
5 concern, but I need to carve out the room to be able to  
6 consult with my clients in India on that. My only concern  
7 is your comment about the back burner for the SRI patents.  
8 As long as we can stay on a relatively --

9 THE COURT: In other words, "back burner"  
10 means -- you have to step back. When is the polymorph -- I  
11 don't think Judge Hall is going to say stay your case.  
12 That's not what I mean by "back burner."

13 MR. SORENSON: All I mean by "not back burner"  
14 is a date certain relatively soon. Not that the date is  
15 relatively soon but that we have a date relatively soon we  
16 can plan around. So if the SRI patents get tried sometime  
17 in 2025, at least we know when that trial is. That's what I  
18 mean.

19 THE COURT: The polymorph doesn't expire until  
20 2034?

21 MR. SORENSON: 2034, correct.

22 THE COURT: I've got to tell you, I'm sorry. If  
23 you've already had one patent trial and you lost and the  
24 patent was upheld as valid and it's good through 2029 and  
25 then you're going to get a second that -- a second set of

1 patents tried that don't expire until 2034, you don't get to  
2 try your third trial in any kind of timely fashion to see if  
3 patents that don't expire until 2037 are valid. We can't  
4 operate like that. That's my point, is get this to the  
5 Federal Circuit. That was what was driving me when I said  
6 let me try do the '284 right away. And so, no, I'm not  
7 going to guarantee you anything about SRI, and I'm not going  
8 to tell Judge Hall she should put on the front burner or the  
9 middle burner, she should do anything other than let's get  
10 the polymorphs and '284 up to the Federal Circuit.

11 MR. SORENSON: I completely agree with that. I  
12 did not mean to distract the conversation away from that  
13 conclusion. My only point is that I need some time to  
14 consult with my client about the agreement about severing  
15 out the SRI patents and having those be completely separate.  
16 I think it's going to be just fine. I'm only saying that  
17 these conversations --

18 THE COURT: That sounds like you don't want an  
19 appeal.

20 MR. SORENSON: No, I want an appeal on the '284  
21 and polymorphs.

22 THE COURT: Why wouldn't you sever out the SRI?  
23 I don't get it. I'm trying to figure out why you wouldn't  
24 do that if you want an appeal.

25 MR. SORENSON: Natco has not been sued on -- I'm

1       sorry. On the SRI patents, no. We want the SRI patents to  
2       get to trial and get an appeal eventually, yes. The whole  
3       point of trying to go on appeal for the '284 now is not have  
4       to wait until all of the patents, all including the SRI  
5       patents, are adjudicated in the district court before we get  
6       to the Federal Circuit.

7               THE COURT: You're not going to have to. What I  
8       just laid out --

9               MR. SORENSON: Correct. All I'm saying is that  
10       when you say "back burner" on the SRI patents, I'm hoping  
11       that doesn't mean that we are in limbo for a very long time  
12       in terms of when the trial gets set. That's all.

13              THE COURT: I'm going to leave that to Judge  
14       Hall, and it's going to depend. If I were Judge Hall, I  
15       wouldn't touch those cases if I thought I could quickly try  
16       the polymorph and get it up to Federal Circuit and get a  
17       decision. If the Federal Circuit affirms -- let's say she  
18       found the patents were not invalid and infringed, the  
19       polymorphs, and let's say they affirmed me; right? You're  
20       not getting on the market until 2034 no matter what. So why  
21       would a judge spend any time on the SRI patents?

22              MR. SORENSON: Because the Federal Circuit may  
23       reverse the '284 decision.

24              THE COURT: I just said if. That's true, they  
25       may reverse the '284.

1 MR. SORENSON: There's an if on my side of the  
2 equation too. If the Federal Circuit has a different  
3 opinion on the '284 and if we lose on the polymorph patents  
4 and if the Federal Circuit has a different decision on those  
5 two, those are all ifs that I recognize. But in these  
6 cases, there's always inflection points. There's always  
7 points where both sides, once they have a definitive answer,  
8 have an opportunity to talk to each other as business people  
9 and resolve the case.

10 THE COURT: The good news is -- and I think this  
11 is a good way to resolve the case for all, for the Court  
12 and both parties and especially the defendants. I think  
13 Judge Hall will be able to get you a quick trial on the  
14 polymorph. If I granted the Rule 54(b), how long is the  
15 Federal Circuit going to take before they decide that? That  
16 could be longer than Judge Hall could get you in trial for  
17 the polymorphs.

18 MR. SORENSON: I was Googling that. I think the  
19 mean time to decision is 14 months in 2022.

20 THE COURT: 14 months to decide whether there's  
21 a 54(b) judgment or not?

22 MR. SORENSON: I thought you were asking about  
23 the timeline it takes for a Federal Circuit appeal to  
24 complete.

25 THE COURT: It takes -- that makes sense. But



1 it also takes time for them to decide whether or not a 54(b)  
2 decision was correct or not. And I'm saying that timeframe,  
3 I'm willing to bet, isn't that much different than Judge  
4 Hall could have you before her trying the polymorph case.

5 I'm going to talk to her right after this and  
6 encourage her to do it as soon as she can. She's got -- she  
7 has -- she does have things in her schedule, but you know.

8 All right. You can talk to your client. Let's  
9 go through what are the decision points.

10 So I'm going to deny the application for Rule  
11 54(b) appeal. Going to deny that. Not that I'm not  
12 sympathetic to the defendants. I am going to -- you all  
13 should -- I would encourage you to get on file a consent to  
14 Magistrate Judge Hall taking over in their entirety all of  
15 these cases. Regardless of whether you do that, when she  
16 becomes a district court judge in January, she will be  
17 assigned these cases as a district court judge. If you  
18 consent to her -- and they've already said they will  
19 consent, so there should be no hold-up on this. In other  
20 words, they can't delay this.

21 You all file a consent this week. I'm going to  
22 ask her to convene, as soon as possible, a scheduling  
23 conference, and I'm going to encourage her to schedule as  
24 early as possible the polymorph trial, and I'm going to tell  
25 her that that way both -- whatever decision she would render

1 on that trial and my decision, the parties agree, would be  
2 appealable immediately to go to the Federal Circuit, and  
3 then she can do what she wants with the third tranche, the  
4 SRI tranche.

5 MR. SORENSON: That sounds good to me.

6 THE COURT: You're good with that?

7 MR. SITZMAN: That's good with me.

8 THE COURT: Thank you. I appreciate you all  
9 being collegial about that.

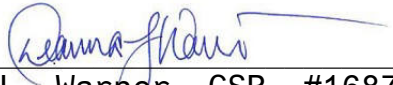
10 Anything else?

11 MS. HUTTNER: No, Your Honor. I think, just for  
12 the record, we're all in the same situation as Mr. Sitzman  
13 regarding client consents.

14 THE COURT: Makes sense. Well, great. Have a  
15 good morning. Thank you.

16 C E R T I F I C A T E

17 I, Deanna L. Warner, a Certified Shorthand Reporter,  
18 do hereby certify that as such Certified Shorthand Reporter,  
19 I was present at and reported in Stenotype shorthand the  
20 above and foregoing proceedings.

21  
22   
23 Deanna L. Warner, CSR, #1687  
24 Official Court Reporter  
25 U.S. District Court

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